

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FIVE STAR PROPERTY
MANAGEMENT,

Plaintiff,

v.

VICTOR VALLE SALAZAR,

Defendant.

No. 1:22-cv-00224-DAD-BAK (SKO)

ORDER *SUA SPONTE* REMANDING CASE
TO THE KERN COUNTY SUPERIOR
COURT AND DENYING DEFENDANT'S
MOTION TO PROCEED *IN FORMA*
PAUPERIS AS MOOT

(Doc. Nos. 1, 3)

This is an unlawful detainer action brought under California state law by plaintiff Five Star Property Management against defendant Victor Valle Salazar. On February 23, 2022, defendant removed this case to this federal court from the Kern County Superior Court. (Doc. No. 1.) According to defendant, removal is proper because Kern County is located within this judicial district and “the Superior Court for the County of Kern did not sustain [defendant’s] Answer,” which the defendant asserts to be “a pleading depend on the determination of Defendant’s rights and Plaintiff’s duties under federal law.” (*Id.* at 2.) Defendant filed a motion to proceed *in forma pauperis* on the same date, February 23, 2022. (Doc. No. 3.)

A district court has “a duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v. Waddell*

1 & *Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is
 2 strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*,
 3 599 F.3d 1102, 1107 (9th Cir. 2010); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582
 4 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
 5 the federal courts, and the burden of establishing the contrary rests upon the party asserting
 6 jurisdiction. *Geographic Expeditions*, 599 F.3d at 1106–07; *Hunter v. Philip Morris USA*, 582
 7 F.3d 1039, 1042 (9th Cir. 2009). In addition, “the existence of federal jurisdiction depends solely
 8 on the plaintiff’s claims for relief and not on anticipated defenses to those claims.” *ARCO Envtl.*
 9 *Remediation, LLC v. Dep’t of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000).
 10 “The strong presumption against removal jurisdiction” means that “the court resolves all
 11 ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042; *Gaus v. Miles, Inc.*, 980
 12 F.2d 564, 566 (9th Cir. 1992). That is, federal jurisdiction over a removed case “must be rejected
 13 if there is any doubt as to the right of removal in the first instance.” *Geographic Expeditions*, 599
 14 F.3d at 1107; *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Gaus*, 980 F.2d at 566. “If
 15 at any time prior to judgment it appears that the district court lacks subject matter jurisdiction, the
 16 case shall be remanded.” 28 U.S.C. § 1447(c); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 932 (9th
 17 Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v.*
 18 *NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997); *see also California ex. rel. Lockyer v. Dynege, Inc.*,
 19 375 F.3d 831, 838 (9th Cir. 2004). Where it appears, as it does here, that the district court lacks
 20 subject matter jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C.
 21 § 1447(c).

22 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
 23 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
 24 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*,
 25 215 F.3d 1005, 1014 (9th Cir. 2000); *see also Dynege*, 375 F.3d at 838; *Duncan*, 76 F.3d at 1485.
 26 Under the well-pleaded complaint rule, courts look to what “necessarily appears in the plaintiff’s
 27 statement of his own claim in the bill or declaration, unaided by anything in anticipation of
 28 avoidance of defenses which it is thought the defendant may interpose.” *California*, 215 F.3d at

1 1014. Accordingly, “a case may not be removed on the basis of a federal defense . . . even if the
 2 defense is anticipated in the plaintiff’s complaint and both parties concede that the federal defense
 3 is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987);
 4 *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); *see also Vaden v.*
 5 *Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a federal question lurks
 6 somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under
 7 federal law.”).

8 Here, defendant has not shown that removal of this action to this federal court is
 9 appropriate. Plaintiff’s complaint is a straight-forward unlawful detainer action that is based
 10 entirely on state law. (*See* Doc. No. 1 at 7–13.) As stated above, defendant relies solely on a
 11 contemplated defense that allegedly rests on unidentified federal law in an attempt to establish
 12 federal jurisdiction. (*Id.* at 2.) Even assuming defendant can assert such a defense, he cannot use
 13 that anticipated defense as the basis for removal because the defensive invocation of federal law
 14 cannot form the basis of this court’s jurisdiction. *See Vaden*, 556 U.S. at 70; *Caterpillar*, 482
 15 U.S. at 392; *Wayne*, 294 F.3d at 1183; *California*, 215 F.3d at 1014.

16 Because there is no federal question appearing in plaintiff’s complaint, defendant has
 17 failed to properly invoke this court’s jurisdiction. Remand to the Kern County Superior Court is
 18 therefore appropriate and mandatory. 28 U.S.C. § 1447(c); *Geographic Expeditions*, 599 F.3d at
 19 1107; *Bruns*, 122 F.3d at 1257.

20 Accordingly,

- 21 1. This action is remanded forthwith to the Kern County Superior Court, pursuant to
- 22 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction;
- 23 2. Defendant’s motion to proceed *in forma pauperis* (Doc. No. 3) is denied as moot
- 24 in light of this order; and
- 25 3. The Clerk of the Court is respectfully directed to close this action.

26 IT IS SO ORDERED.

27 Dated: **February 23, 2022**

28 
 UNITED STATES DISTRICT JUDGE